IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2472 OF 2005

Mr. Vipul Ramchandra Doshi ...Applicant

V/s

State of Maharashtra. ...Respondent.

Mrs. Mallika A. Ingale for the petitioner.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 19th April, 2005.

P.C.

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. Applicant is challenging the show cause notice issued by the Special Executive Magistrate dated 8/2/2005 in which the applicant is called upon to show cause as to why proceedings under section 107 of the Criminal Procedure Code should not be initiated against him and why he should not be asked to execute a bond of good behaviour for a period of one year in the sum of Rs 5000/- and he was called upon to give written submission by 15/2/2005.

3. The learned Counsel appearing on behalf of the applicant submits that the very order of issuance of show cause notice dated 8/2/2005 is illegal as it is

based on solitary incident and, therefore, this notice itself is liable to be quashed. In support of the said submission, the learned Counsel as relied upon the judgment of the Calcutta High Court in the case of Tulsibala Rakhit and another vs. N.N. Khosal reported in 1953 Cri.L.J. 344 (Calcutta) wherein the Calcutta High Court had held that notice under section 107 issued by the Executive Magistrate was illegal since it did not state the amount of the bond to be executed, term for which it was to be in force, and the number, character and class of sureties if any required.

4. The learned Counsel appearing on behalf of the applicant has taken me through the show cause notice. It is not possible to accept the submissions made by the learned counsel appearing on behalf of the applicant. In the judgment on which the reliance is placed by the learned Counsel for the applicant, the Calcutta High Court has come to the conclusion that the show cause notice was illegal since it did not state the amount of the bond to be executed, term for which it was to be in force or number, character and class of sureties if any required. On the facts of the said case also it was found that initially show cause notice under section 107 was issued by one

Executive Magistrate and, after his transfer, another show cause notice was issued by another Magistrate and, therefore, the Court observed that the second notice was not in the manner as provided under section 112 of the Criminal Procedure Code.

5. In my view, the challenge to the show cause notice is premature as the opportunity has been given by the Magistrate to show cause. Applicant to give reply to the show cause notice and appear within two weeks before the Magistrate. Magistrate to give personal hearing to the applicant or his counsel after his written submissions are filed and pass the order on merits and in accordance with law.

6. If any adverse order is passed by the Executive Magistrate, that order shall be kept in abeyance for a period of four weeks in order to enable the applicant to challenge the said order before the appropriate Court.

7. With the above directions Criminal Application is dismissed.

V.M. KANADE, J.